Royal Commission into Institutional Responses to Child Sexual Abuse

Consultation Paper - Institutional Responses to Child Sexual Abuse in Out of Home Care

Children and Young People with Disability Australia
Submission - April 2016

CONTENTS

INTRODUCTION

Children and Young People with Disability Australia (CYDA) welcomes the opportunity to provide feedback regarding the Royal Commission's consultation paper about *Institutional Responses to Child Sexual Abuse in Out of Home Care.* This submission focuses on issues of key relevance to children with disability contained in the consultation paper.

Given the additional vulnerability to sexual abuse and overrepresentation in out of home care (OOHC) experienced by children with disability, CYDA supports the development of a strong regulatory framework and robust safeguards that address the needs of children with disability. It is imperative that all jurisdictions adopt a proactive approach to preventing child sexual abuse in OOHC and children affected by sexual abuse have access to appropriate support that meets their specific needs.

CYDA commends the work of the Royal Commission in developing the consultation paper, acknowledging particularly the section on child safe standards and the focus on prevention. The consultation paper provides a comprehensive and well considered discussion which encapsulates the extreme complexity of the OOHC and child protection systems and their associated regulatory frameworks. This is a significant achievement given the absence of robust and reliable data and jurisdictional differences. The paper also demonstrates a solid understanding of the heightened vulnerability to sexual abuse experienced by children with disability and the additional barriers to disclosure and accessing support services.

CHILDREN AND YOUNG PEOPLE WITH DISABILITY AUSTRALIA

CYDA is the national representative organisation for children and young people with disability, aged 0 to 25 years. The organisation is primarily funded through the Department of Social Services (DSS) and is a not for profit organisation. CYDA has a national membership of 5500.

CYDA provides a link between the direct experiences of children and young people with disability to federal government and other key stakeholders. This link is essential for the creation of a true appreciation of the experiences and challenges faced by children and young people with disability.

CYDA's vision is that children and young people with disability living in Australia are afforded every opportunity to thrive, achieve their potential and that their rights and interests as individuals, members of a family and their community are met.

CYDA's purpose is to advocate systemically at the national level for the rights and interests of all children and young people with disability living in Australia and it undertakes the following to achieve its purpose:

- **Listen and respond** to the voices and experiences of children and young people with disability;
- **Advocate** for children and young people with disability for equal opportunities, participation and inclusion in the Australian community;
- **Educate** national public policy makers and the broader community about the experiences of children and young people with disability;
- **Inform** children and young people with disability, their families and care givers about their citizenship rights and entitlements; and
- **Celebrate** the successes and achievements of children and young people with disability.

CYDA has received specific funding from DSS to undertake project work regarding the Royal Commission into Institutional Responses to Child Sexual Abuse. Through this work CYDA provides information, referral and systemic advocacy for children with disability.

SEXUAL ABUSE OF CHILDREN WITH DISABILITY

As acknowledged in the consultation paper, children with disability experience increased vulnerability to all forms of abuse, including sexual abuse, compared to their peers without disability.[1] However, there is currently no national data on the prevalence of sexual abuse of children with disability in Australia.

An international study found that children with disability were 3.14 times more likely to be sexually abused than other children.[2] Research suggests that children with communication and high behaviour support needs have a heightened risk of abuse and that children with disability are more likely to experience multiple assaults, more severe abuses and incur physical injuries as a result of abuse.[3] It has been stated that three factors make children with disability more vulnerable. These are society's attitudes and assumptions; inadequate services; and factors associated with impairment.[4]

Reporting experiences of sexual abuse is challenging and traumatic for all children. Many people can take years to make a disclosure of child sexual abuse.[5] The challenge of reporting abuse can be further compounded for children with disability, often due to assumptions held about disability and views of impairment. For children with high communication support needs, communication often occurs primarily through behaviour, however this is often not recognised. Certain behaviour, such as repeated head banging or nail biting, may indicate distress but is often misattributed to disability, meaning the cause of distress is not identified.[6] Further, ill-informed views hold that children with disability have limited comprehension which diminishes the impact of abuse. This can lead to assumptions that children with disability do not understand what has happened, are unaffected by sexual abuse or that the impact is lessened.

CHILDREN WITH DISABILITY IN STATUTORY OUT OF HOME CARE

The consultation paper also recognises that children with disability are believed to be overrepresented in statutory OOHC despite there being no reliable national data. Limited available research reflects this high representation. Research undertaken by the Victorian Equal Opportunity and Human Rights Commission, CREATE Foundation and OzChild indicated that the prevalence of disability within the OOHC populations surveyed was 14 per cent, 22.5 per cent and 42 per cent

[1] P Sullivan et al. 2000, 'Maltreatment and disabilities: A population-based epidemiological study,' *Child abuse and neglect,* Vol. 24, No. 10, p. 1257, Children and Young People with Disability Australia 2012, *Enabling and protecting: Proactive approaches to addressing the abuse and neglect of children and young people with disability,* Melbourne.
[2] Sullivan et al. 2000, *Maltreatment and disabilities: A population-based epidemiological study*, p. 1257.
[3] Children and Young People with Disability Australia 2012, *Enabling and Protecting: Proactive approaches to addressing the abuse and neglect of children and young people with disability*, p. 10, D Skarbek et al. 2009, 'Stop sexual abuse in special education: An ecological model of prevention and intervention strategies for sexual abuse in special education,' *Sexuality and disability,* Vol. 27, p. 157.
[4] Children and Young People with Disability Australia 2012, *Enabling and protecting: Proactive approaches to addressing the abuse and neglect of children and young people with disability*.
[5] Royal Commission into Institutional Responses to Child Sexual Abuse 2014, *Interim report volume one,* Commonwealth of Australia, Canberra, p. 154.
[6] Ibid, p. 160.

respectively.[7] Even when considering the lowest estimate of 14 per cent, this is almost double the prevalence rate of children and young people with disability aged 0 to 24 in the Australian population (7.3 per cent).[8] Victorian research also suggests that children with disability are more likely to be in residential care than children without disability.[9] Further, there is very limited research examining why children with disability are likely to be overrepresented in OOHC.

CYDA believes that any existing estimates of the proportion of children with disability in OOHC are likely to be an underestimation. CYDA is aware that many children with disability are not recognised as disability has never been identified within families or formally or the child does not personally identify as having a disability. Moreover, at times the knowledge and expertise is not available within the OOHC system to identify if a child has a disability.

Children with disability are also users of other types of OOHC that are not a result of a child protection intervention (described as 'voluntary OOHC' in the consultation paper). Out of home disability services and voluntary OOHC are discussed in further detail on page 13.

As a cohort that experiences both vulnerability to sexual abuse and overrepresentation in OOHC, it is critical that the recommendations of the Royal Commission regarding safeguards and oversight of OOHC reflect the needs and circumstances of children with disability.

SPECIFIC RESPONSES TO THE CONSULTATION PAPER

CHILD TO CHILD SEXUAL ABUSE

The incidence of child to child sexual abuse in OOHC has been increasingly recognised as a key issue of concern in child protection inquiries and research. The 2015 *Inquiry into the adequacy of the provision of residential care services to Victorian children and young people who have been subject to sexual abuse or sexual exploitation whilst residing in residential care* by the Commission for Children and Young People in Victoria found that 31 per cent of reported cases of child sexual abuse during the Inquiry period were perpetrated by children.[10]

Research and data available about experiences of child to child sexual abuse where either the victim or perpetrator is a child with disability is scarce. However, high representation in OOHC strongly suggests children with disability are an at-risk cohort. There is therefore a need to ensure that any work to expand the evidence base regarding best practice in preventing and responding to child to child sexual abuse includes a focus on children with disability.

Recommendation 1: States and territories collect data and commission research about child to child sexual abuse in out of home care that includes a specific focus on the experiences of children with disability.

---

[7] Victorian Equal Opportunity and Human Rights Commission 2012, *Desperate measures: The relinquishment of children with disability into state care in Victoria,* Carlton, p. 7, CREATE Foundation 2013, *Experiencing out of home care in Australia: The views of children and young people,* Brisbane, p. 14, G Mitchell 2013, *Children with disabilities using child and family welfare services, Melbourne*, OzChild, South Melbourne, p. 2.

[8] Australian Bureau of Statistics 2012, *Disability, ageing and carers, Australia: Summary of findings, 2012*, Commonwealth of Australia, Canberra.

[9] Victorian Equal Opportunity and Human Rights Commission 2012, *Desperate measures: The relinquishment of children with disability into state care in Victoria,* p. 7.

[10] Commission for Children and Young People 2015, *"…As a good parent would…": Inquiry into the adequacy of the provision of residential care services to Victorian children and young people who have been subjected to sexual abuse or sexual exploitation whilst residing in residential care,* Melbourne, p. 49.

The shortage of home-based care for children with sexually harmful behaviours and the inappropriate matching of these children with other vulnerable children in residential and home-based care

Limited available research suggests that children with disability are more likely to be placed in residential OOHC compared to children without disability.[11] However, CYDA's understanding is that minimal work has been undertaken to examine why this is the case and what the barriers are to home based care placements for children with disability who require OOHC.

CYDA notes that the 2015 *Inquiry into the adequacy of the provision of residential care services to Victorian children and young people who have been subject to sexual abuse or sexual exploitation whilst residing in residential care* by the Commission for Children and Young People in Victoria made a number of recommendations relating to home based care and placement matching. The report emphasises the importance of making decisions regarding OOHC placements in the best interests of the child involved and recommends introducing a panel of experts to oversee placement decisions. CYDA would like to highlight the importance of ensuring that the additional vulnerability to abuse of children with disability is also considered when placement decisions are made.

Recommendation 2: All states and territories implement recommendation one of the 2015 *Inquiry into the adequacy of the provision of residential care services to Victorian children and young people who have been subject to sexual abuse or sexual exploitation whilst residing in residential care* by the Commission for Children and Young People in Victoria:

> *As a matter of priority, the Department [of Health and Human Services] must improve systems and processes for children entering residential care, changing placements and exiting residential care. This should be done by creating an expert panel, with some members independent of funder and provider, to assess all residential care placement decisions.*
>
> *The panel will assess placement decisions by considering:*
> - *compliance with the Aboriginal child placement principle for Aboriginal children*
> - *the impact on other children in the residential care unit*
> - *the suitability and safety of the placement*
> - *a demonstration that the placement will provide the best outcome for the child*
> - *the adequacy of stability planning and planning for when a child leaves care.*

Recommendation 3: All states and territories develop systems and processes to ensure placement decisions for children entering out of home care include consideration of the additional vulnerability to abuse experienced by children with disability and the specific needs and circumstances of each child with disability.

The lack of adequate and sufficient treatment responses for children across Australia who display sexually harmful behaviours

The consultation paper states that "further attention needs to be directed towards strengthening and resourcing programs across Australia that have the expertise to treat children with sexually

[11] Victorian Equal Opportunity and Human Rights Commission 2012, *Desperate measures: The relinquishment of children with disability into state care in Victoria,* p. 7.

harmful behaviours."[12] An additional consideration requiring further research and examination is whether these services are able to meet the diverse and complex needs of children with disability.

The Victorian Government funds *Sexually Abusive Behaviours Treatment Services* "for children and young people under the age of 15 years who display problem sexual behaviour or sexually abusive behaviour towards others."[13] Services are required to follow the CEASE *Standards of Practice for Problem Sexual Behaviours and Sexually Abuse Behaviour Treatment Programs,* (auspiced by the Australian and New Zealand Association for the Treatment of Sexual Abuse) which "present a minimum set of requirements for services and service goals to ensure equity of access and quality of care for delivery of services."[14] The Standards state that "children and young people with a disability tend to be overrepresented amongst those referred for treatment."[15]

The Victorian services model and the CEASE Standards of Practice are examples of responses for children with sexually harmful behaviour that warrant further examination and evaluation to consider their effectiveness and if they can be replicated in other jurisdictions. An important further consideration is whether these or other existing programs can meet the needs of children with disability.

Recommendation 4: States and territories ensure that any research and program development and evaluation regarding sexually harmful behaviours treatment programs includes a focus on whether these programs incorporate the needs of children with disability.

The lack of policies, procedures and/or best practice guidance for preventing and responding to child-to-child sexual abuse in OOHC

Policies, procedures and best practice guidelines should reflect the diverse needs of children utilising OOHC services and uphold child safe principles. It is therefore necessary for policies, procedures and guidelines to acknowledge and reflect the overrepresentation of children with disability and their vulnerability to abuse, sexual or otherwise. These should address considerations for children with disability who are both victims and perpetrators of child to child sexual abuse.

Recommendation 5: States, territories and out of home care service providers ensure that best practice guidelines, policies and procedures for preventing and responding to child to child sexual abuse in out of home care acknowledge and reflect the overrepresentation of children with disability and their vulnerability to abuse.

DATA LIMITATIONS

CYDA supports the establishment of nationally consistent data collection approach. Presently, the lack of data forms a significant barrier to developing informed policies to prevent and better respond to sexual abuse of children with disability in OOHC.

CYDA notes that there are barriers to developing an accurate national picture of the prevalence of sexual abuse of children with disability generally and in specific settings including OOHC. Data

[12] Royal Commission into Institutional Responses to Child Sexual Abuse 2016, *Consultation paper: Institutional responses to child sexual abuse in out of home care,* Commonwealth of Australia, Canberra, p. 39.
[13] Victorian Government Department of Health and Human Services 2013, *Sexually abusive behaviours treatment services,* Melbourne, viewed 5 April 2016, http://goo.gl/qilnVq.
[14] CEASE 2012, *Standards of practice for problem sexual behaviours and sexually abuse behaviour treatment programs,* Australian and New Zealand Association for the Treatment of Sexual Abuse, Melbourne, p. 7.
[15] Ibid, p. 18.

collection methods and definitions regarding substantiated instances of child abuse differ between jurisdictions and sectors. Further, there are varying definitions of disability across states and territories.

Key gaps in present data include:

- Representation of children with disability in statutory OOHC;
- Prevalence of sexual abuse of children with disability, including rates of child to child sexual abuse, at the population level and in specific contexts including OOHC; and
- Representation of children with disability in treatment programs for sexually harmful behaviour.

It is important that these gaps in knowledge are addressed. This lack of information inhibits the forming of an accurate assessment of the sexual abuse of children with disability in OOHC and developing a firm basis on which to develop and implement best practice in policy making and service delivery.

The proposed data collection model in the consultation paper states that:

> *"Each allegation should include demographic descriptors for the child and the perpetrator, including:*
>
> - *disability (including the type of impairment)*
> - *mental health*
> - *Aboriginal or Torres Strait Islander background*
> - *culturally and linguistically diverse background."*[16]

CYDA supports the collection of demographic data, including disability, for allegations of abuse in OOHC. However, it will also be necessary to consider how disability will be defined and how staff will be supported, potentially through training, to identify disability.

Recommendation 6: State, territory and Commonwealth governments collaborate to collect national data on the number of children with disability in out of home care.

Recommendation 7: State, territory and Commonwealth governments and out of home care service providers collaborate to collect national data regarding allegations of sexual abuse in out of home care that includes demographic descriptors for the child and perpetrator, including disability status.

Recommendation 8: State, territory and Commonwealth governments and therapeutic treatment service providers collaborate to collect national data that identifies the number of children with disability in treatment programs sexually harmful behaviour.

CHILD SAFE ORGANISATIONS

CYDA supports the nine child safe principles included in the consultation paper and views child safe standards and accreditation as a vital safeguard for children with disability utilising OOHC and institutional services more broadly.

[16] Royal Commission into Institutional Responses to Child Sexual Abuse 2016, *Consultation paper: Institutional responses to child sexual abuse in out of home care,* p. 46.

The roles, accountabilities and interdependencies of different parts of the OOHC system (such as government agencies, non-government organisations and carers) in delivering and overseeing the key elements of a child safe organisation

With regards to oversight of child safe practice in organisations, an important consideration is to ensure consistency of expectations, policies and practice. All children who are involved in organisations and institutions have the right to safety, protection and a high standard of care and this shouldn't differ depending on the setting or service provider. The roles and responsibilities of the different parts of the OOHC system should therefore be oriented to ensuring consistency and compliance. CYDA envisages that state and territory governments and commissions for children and young people and/or children's guardians would have a central role to play in overseeing the implementation of child safe standards and practice. Non-government organisations who provide OOHC services would then be responsible for applying child safe standards and practice to the specific context of their services.

Recommendation 9: State, territory and Commonwealth governments develop nationally consistent child safe standards and appropriate mechanisms for implementation and oversight.

The application of these elements in the OOHC system, including whether they should be binding or non-binding

CYDA believes that all child safe principles or frameworks should be binding for all services that work with children, including OOHC service providers. The current *National Framework for Creating a Child Safe Environment* is a non-binding document that allows the states and territories to develop and implement their own standards and accreditation processes for child safe organisations. The Victorian Government has developed mandatory child safe standards that "apply to organisations that provide services for children to help protect children from all forms of abuse."[17]

Consideration should therefore be given to which model of child safe standards can be implemented in all jurisdictions to ensure consistency of practice and expectation. One option could be the creation of mandatory national standards with state and territory-based monitoring of compliance.

It is the view of CYDA that there needs to be a requirement for all organisations that have the care of children to maintain a child safe accreditation, including OOHC providers. Funding of OOHC services will therefore need to accommodate the additional work required to obtain and comply with standards required for child safe accreditation.

Recommendation 10: Implementation of legally mandated child safe standards applicable to all out of home care service providers.

Whether all forms of OOHC should be required to comply with all of the child safe standards and principles

As stated above, CYDA believes that the safeguards afforded to children should not change depending on the type of service accessed and therefore supports mandatory compliance with child safe standards and principles of all OOHC providers and services.

[17] Victorian Government Department of Health and Human Services 2015, *Child safe standards,* Melbourne, viewed 5 April 2016, http://goo.gl/4l6omn.

The regulatory, oversight, monitoring and implementation support mechanisms that might be required to support the implementation of child safe standards in OOHC

It is the view of CYDA that that OOHC sector requires strong regulatory, oversight, monitoring and support mechanisms to ensure child safe standards are implemented. An important area of oversight is organisational governance frameworks. CYDA believes it is critical that organisational governance includes clear responsibility for ensuring the safety of children and this needs to be clearly present and transparent in all governance documents and policies. This requires recognition that sexual abuse in institutions is facilitated by systemic factors rather than purely the malicious actions of individuals (commonly referred to as the 'bad apples' argument).

There is a parallel that can be drawn with the legislated requirements for employers, including boards of directors and managerial staff, to ensure that occupational health and safety (OHS) regulations are implemented and workers are safe. The requirements of employers are covered in relevant state and territory legislation and there are significant penalties for non-compliance.[18] This system ensures clear expectations for employers, demarcates clear responsibility within organisations and provides clear recourse within the law if violations are made. Consideration should be given to whether elements of the OHS regulatory framework could inform regulation and oversight of OOHC services to ensure the safety of children is upheld and there are clear consequences for organisations breaching their duty of care.

Recommendation 11: State and territory governments implement a regulatory framework, which includes clear accountability at the governance level of organisations, to ensure the safety of children accessing services, including sanctions for serious breaches in duty of care regarding abuse of children.

Whether there are specific challenges/considerations for the OOHC sector and/or particularly vulnerable groups within the OOHC setting when it comes to implementing child safe standards

CYDA believes that it is critical that child safe standards and practice recognise and reflect the additional vulnerabilities of children with disability to experiencing all forms of abuse, including sexual abuse. Below are CYDA's comments on some of the child safe principles contained in the consultation paper:

Organisational leadership, governance and culture: A key factor that impacts experiences of abuse of children with disability are negative attitudes that devalue children with disability and equate disability with incapacity and inferiority (known as ableism). It is therefore critical that OOHC providers are able to confront and address any ableism within their organisational culture. This must occur through adopting a rights based, person-centred culture that values children with disability and identifies upholding human rights as the primary consideration that drives service delivery. These principles need to be embedded in all policies, procedures and governance frameworks and be reinforced by organisational leadership.

Human resources management: It is important to examine the systemic workforce issues in institutions and the way this impacts abuse experienced by children with disability. There has been a link established in research between high levels of worker casualisation and an increased risk of client abuse.[19] Research has found that the "increasing number of short term and casual staff has serious implications for the recognition and response to patterns of abuse and neglect in particular,

[18] A Blackwood 2014, 'Yooralla failings: No more excuses,' *The Age,* viewed 22 July 2015, http://goo.gl/sQchRa.
[19] S Robinson et al 2010, 'Preventing abuse in accommodation services: From procedural response to protective cultures,' *Journal of intellectual disabilities*, Vol. 15, No. 1, p. 65.

as there is a dearth of long-term moral witnesses to note the cumulative effect of this maltreatment."[20]

A workplace that is adequately resourced in terms of staff, training, regular supervision and opportunities for professional development is important. Secure employment within these settings is also vital to sustained stability in the workplace. Imperative to implementing safeguards to protect children with disability from abuse involves ensuring staff are appropriately supported. It is important that human resource planning within organisations is focused on careful recruitment, selection, assessment, training and supervision of all staff, in line with child safe principles.

Child focused complaints processes: CYDA supports the development of child-centred complaints processes. However, it is critical to note that children with disability often experience significant barriers to reporting sexual abuse. It is important that organisations recognise and respond to the diverse communication needs of children in OOHC, including when children communicate through ostensibly through behaviour.

Education and professional development: OOHC staff, as well as kinship and foster carers, should be able to access education and training in child safe principles that includes a focus on children with disability. It is critical that, in addition to having policies informed by human rights to participation and inclusion, staff have an understanding of the vulnerability that children with disability have to abuse, including sexual abuse. This could also include education about the signs of possible sexual abuse, and awareness of the diverse communication needs of children.

Children's participation and empowerment: CYDA strongly supports the inclusion of this principle in the consultation paper. Children with disability typically experience considerable barriers in participating in decisions that impact their lives, including a culture of low expectations and perceptions of disability as incapacity.[21] An organisational culture that values the contributions and participation of children with disability is fundamental to addressing these barriers.

Recommendation 12: National child safe standards include requirements that organisations comply with minimum employment standards for staff supervision, professional development and working conditions that are known to be important safeguards in preventing child sexual abuse.

Recommendation 13: National child safe standards include requirements that organisations must comply with minimum pre-employment screening processes for people working with all children, including children in out of home care.

Recommendation 14: Inclusion in national child safe standards regarding 'education and training' of a focus on disability so staff are educated about the heightened vulnerability to abuse experienced by children with disability and the barriers to recognising abuse.

PREVENTION OF CHILD SEXUAL ABUSE IN OUT OF HOME CARE

Prevention of sexual abuse needs to be the primary focus of organisations that work with children with disability because of the barriers to recognising and identifying abuse. This needs to be reflected in the policies, procedures and best practice guidelines of OOHC providers. Rather than relying on a complaints based system where responses occur only following the reporting of an

[20] Robinson et al 2010, *Preventing abuse in accommodation services: From procedural response to protective cultures*, p. 65.

[21] For further information, see CYDA's issues paper *Strengthening participation of children and young people with disability in advocacy,* available at http://www.cda.org.au/strengthening-participation.

incident, prevention must be an active policy embedded within policy and practice. CYDA therefore supports the development of a national strategy to prevent child sexual abuse in OOHC. This must address the specific needs of children with disability.

CYDA's comments on specific aspects of the proposed strategy are below:

Raising awareness about children in OOHC being vulnerable to sexual victimisation and revictimisation, among carers, children in OOHC, practitioners and OOHC service providers

CYDA supports this component and again stresses the importance of ensuring the additional vulnerabilities of children with disability are included and emphasised.

An education prevention program targeted to children, carers and practitioners in OOHC

Having access to education regarding safety and healthy sexual relationships is important for all children. However, because the sexual development of children with disability is not always acknowledged, opportunities for education regarding sex and healthy relationships are often denied.[22] Further, children who require regular support with personal care can have less opportunity to define and protect their personal space and may have increased reliance on adults to impart the importance of boundaries.[23] These factors have been identified in research as increasing children with disability's vulnerability to experiencing sexual abuse.[24]

It is also important to note that children who have very high support needs and are often highly or totally dependent on other people and organisational safeguards to ensure their safety. It is therefore inherent upon institutions to have a strong and robust quality and safeguarding framework in place.

This illustrates the importance of ensuring that sex education and sexual abuse prevention programs are flexible and where necessary individually tailored to the specific needs and circumstances of each child. Typically children can access this education from their family or school. However, schools often do not have the expertise and/or resources to provide this highly individualised support. Consideration should be given to how the professionals a child already knows could provide knowledge, expertise or provision of relevant education.

It is important to note that children with disability in OOHC may have experienced barriers to developing their own instincts about people and situations that are unsafe. When children with disability are not listened to and their ideas, feelings and thoughts are not valued and encouraged, it can inhibit the development of an intrinsic understanding of what is or isn't safe. This was reflected in research published by the Royal Commission that explored what children and young people with disability view as important to feel safe in institutional settings.[25] This research found that "many children and young people lack the skills and support to identify and act on feelings and instincts

[22] I Wissink et al. 2015, 'Sexual abuse involving children with an intellectual disability (ID): A narrative review,' *Research in developmental disabilities,* Vol. 36, p. 28.
[23] Skarbek et al. 2009, *Stop sexual abuse in special education: An ecological model of prevention and intervention strategies for sexual abuse in special education*, p. 157.
[24] Wissink et al. 2015, *Sexual abuse involving children with an intellectual disability (ID): A narrative review,* p. 28, Skarbek et al. 2009, *Stop sexual abuse in special education: An ecological model of prevention and intervention strategies for sexual abuse in special education*, p. 157.
[25] S Robinson 2016, *Feeling safe, being safe: What is important to children and young people with disability and high support needs about safety in institutional settings?,* Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney.

that could keep them safer from potential abuse in institutional settings."[26] The paper argues that "work is needed to assist children and young people and their supporters to recognise and assess the relative risk of harm."[27] CYDA believes that these important considerations around protective behaviours should inform the provision of sex education and sexual abuse prevention programs for children with disability, including in OOHC. Further, it is important that OOHC staff access education and/or professional development that provides an understanding of this important issue.

CYDA acknowledges that providing sex education and sexual abuse prevention programs to children in OOHC involves a complex web of considerations. Given the chronic and entrenched problems in the OOHC system, such as high rates of workforce casualisation and staff turnover, lack of resources, and unstable placements, the success of sex education and sexual abuse prevention programs will depend upon these and a range of other issues being addressed.

Within this complex system, the crucial starting point is to ensure that consideration of protective behaviours and access to sex education and sexual abuse prevention programs is given when assessing the needs of each child in OOHC. It will then be necessary to determine how it can be ensured that this education is appropriate and individually tailored to each child. One option could be that OOHC service providers have primary responsibility for ensuring that each child in care receives this education.

Recommendation 15: State and territory governments and out of home care service providers develop systems and processes to ensure consideration is given to strengthening protective behaviours for each child in out of home care, including access to sex education and sexual abuse prevention programs where necessary.

Recommendation 16: State and territory governments and out of home care service providers develop mechanisms to ensure sex education and sexual abuse prevention programs can be tailored to the individual needs and circumstances of each child.

A SUPPORTIVE AND QUALITY CARE ENVIRONMENT

Ensure adequate access to therapeutic treatment and advocacy and support that is tailored to a child's individual needs, culture, age and abilities, with particular consideration for children with disability and children from culturally and linguistically diverse backgrounds.

Considerations regarding access to advocacy, support and therapeutic treatment services for children with disability can be found in CYDA's submission to the Royal Commission's tenth issues paper into *Advocacy and Support and Therapeutic Treatment Services*.

ADDITIONAL CONSIDERATIONS

VOLUNTARY OUT OF HOME CARE

Children with disability may also access out of home disability services and supports, including respite services. Out of home respite comprises a wide range of services that aim to support families and provide a "break from caring." Children accessing respite can have different support needs. Respite services can be formal, such as day or overnight respite centres or day outings with respite workers and can also involve less formal and voluntary OOHC.

[26] S Robinson 2016, *Feeling safe, being safe: What is important to children and young people with disability and high support needs about safety in institutional settings?,* p. 9.
[27] Ibid, p. 9.

CYDA is concerned that out of home disability services often involve a number of factors associated with a high risk of sexual and other forms of abuse occurring. These services are typically disability-specific or segregated and therefore cluster vulnerable people together.[28] Further, disability services often have high staff turnover and a casualised workforce.[29] CYDA therefore strongly recommends that the Royal Commission's work on OOHC include out of home disability services.

Services accessed by children with disability can also be provided in-home by an external service provider. This model of service provision can also pose risks of sexual abuse, particularly for children with heightened vulnerability due to communication and behaviour support needs. For example, testimony provided at the Royal Commission Public Hearing 38 into criminal justice issues included a case of sexual abuse of a child with disability by a worker providing in-home support. In this example, a young boy was sexually abused by a worker providing respite care in the family home.[30] This demonstrates the vulnerability to abuse experienced by children with disability accessing in-home supports.

Of fundamental importance is that all disability services have strong quality and safeguarding frameworks that ensure:

- Appropriate screening, supervision and monitoring of staff;
- Ongoing connection and discussions with children accessing services and their families about the service to identify and respond if any issues arise; and
- Ongoing and critical examination of how policies and frameworks are ensuring safety of clients in practice and prevention of all forms of abuse including sexual abuse.

The Australian Senate Select Committee on Community Affairs conducted an Inquiry into *Violence, abuse and neglect against people with disability in institutional and residential settings* in 2015.[31] The final report made a number of recommendations to strengthen safeguards for people with disability, including children, in all institutional and residential settings. Many of these recommendations are applicable to children accessing in-home and out of home disability services and therefore to the work of the Royal Commission. The Royal Commission is encouraged to contact CYDA if they require any further information regarding safeguards for children accessing disability services and supports, as this issue includes a significant breadth of considerations.

Recommendation 17: Implementation of recommendation two of the final report of the Senate Community Affairs References Committee Inquiry into *Violence, abuse and neglect against people with disability in institutional and residential settings:*

> *The committee recommends the Australian Government consider the establishment of a national system for reporting and investigating and eliminating violence, abuse and neglect of people with a disability, which should, at a minimum:*

[28] Children and Young People with Disability Australia 2012, *Enabling and Protecting: Proactive approaches to addressing the abuse and neglect of children and young people with disability*, p. 12.
[29] Robinson et al. 2011, *Preventing abuse in accommodation services: From procedural response to protective cultures,* p. 65.
[30] Royal Commission into Institutional Responses to Child Sexual Abuse 2016, *Public Hearing - Case Study 38 (Week 2) (Day 175),* Sydney.
[31] Senate Community Affairs References Committee 2015, *Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability*, Commonwealth of Australia, Canberra.

- *be required to work in collaboration with existing state and territory oversight mechanisms; cover all disability workers, organisations and people with disability, without being restricted to NDIS participants;*
- *include a mandatory incident reporting scheme; and*
- *include a national worker registration scheme with pre-employment screening and an excluded worker register.*
- *These elements are best implemented through the establishment of a national, independent, statutory protection watchdog that has broad functions and powers to protect, investigate and enforce findings related to situations of violence, abuse and neglect of people with disability.*

Recommendation 18: Implementation of recommendation three of the final report of the Senate Community Affairs References Committee Inquiry into *Violence, abuse and neglect against people with disability in institutional and residential settings:*

> *The committee recommends the Australian Government establish a scheme to ensure national consistency in disability worker training, to include the elements of:*
>
> - *mandatory rights based training to develop core competency skills in recognising and reporting violence, abuse and neglect of people with disability;*
> - *review of current training and qualification levels to be conducted in collaboration with people with disability and the disability sector, with a view to increasing requirements;*
> - *increased levels of training requirements to work with people with disability who have greater needs or vulnerabilities; and*
> - *consideration of the need for an independent training program accreditation agency or body to oversee the scheme.*

Recommendation 19: Implementation of recommendation four of the final report of the Senate Community Affairs References Committee Inquiry into *Violence, abuse and neglect against people with disability in institutional and residential settings:*

> *The committee recommends the Australian Government consider establishing a disability worker registration scheme, to include the elements of:*
>
> - *nationally consistent pre-employment screening;*
> - *an excluded worker registration scheme, tied to a mandatory incident reporting scheme;*
> - *yearly worker registration scheme, with requirements for national criminal checks every five years;*
> - *requirements for ongoing professional development; and*
> - *a step-up system of registration, which requires increased training and skills to work with people with disability who have increased needs or vulnerabilities.*
>
> *The registration worker scheme will be best overseen by the national disability watchdog.*

Recommendation 20: Implementation of recommendation five of the final report of the Senate Community Affairs References Committee Inquiry into *Violence, abuse and neglect against people with disability in institutional and residential settings:*

> *The committee recommends the Australian Government consider establishing a national approach to modify state and territory and Commonwealth service delivery accreditation programs, to:*

- *ensure national consistency in service delivery accreditation programs;*
- *impose stronger requirements for facility and client specific induction training for carers;*
- *impose a mandatory incident reporting requirement tied to ongoing accreditation; and*
- *consider a scheme to impose service delivery standard requirements on management and boards, similar to occupational health and safety schemes.*

The changes to accreditation schemes will be best overseen by the national disability watchdog.

Recommendation 21: Implementation of recommendation nine of the final report of the Senate Community Affairs References Committee Inquiry into *Violence, abuse and neglect against people with disability in institutional and residential settings:*

The committee recommends the Australian Government work with state and territory governments on a nationally consistent approach to existing state and territory disability oversight mechanisms, to include;

- *a clear distinction between dispute resolution and complaints investigation processes;*
- *a requirement that service delivery organisations should not report to funding agencies due to the conflict of interest;*
- *the principle that immediate action be taken on allegations of abuse to ensure the individual's safety;*
- *increased funding for community visitor schemes, with consideration these schemes be professionalised in all jurisdictions and with a mandatory reporting requirement for suspected violence, abuse or neglect; and*
- *greater crossover in oversight and complaints mechanisms between aged care and disability and recognising that over 7000 young people with disability live in aged care facilities, ensure that disability service standards are applicable.*

A nationally consistent approach to disability oversight mechanisms is best overseen by the national disability watchdog.

IN HOME CARE AND THERAPEUTIC SUPPORTED FAMILY GROUP HOME MODELS

In the chapter of the consultation paper about 'a supportive and quality care environment,' there is a section on "in-home care and therapeutic supported family group home models."[32] It is the view of CYDA that this section does not accurately reflect the contexts in which children with disability access in-home care. For example, CYDA questions the statement that the "in-home care model can only be used where a child cannot be cared for by another service."[33] CYDA is aware of cases where in-home care options are used that do not reflect this statement. In-home care options are used in a wider range of circumstances than those described in the consultation paper.

RELINQUISHMENT

CYDA is concerned that a small but growing number of families of children with disability turn to OOHC services for permanent care options due to ongoing failure to access services and supports. There is, however, a lack of data available about this issue. This sustained lack of support can place

[32] Royal Commission into Institutional Responses to Child Sexual Abuse 2016, *Consultation paper: Institutional responses to child sexual abuse in out of home care,* p. 112.
[33] Ibid, p. 112.

an inexorable amount of pressure on some families who can become unable to cope and subsequently relinquish the care of their children to the state. However, the term 'relinquishment' is problematic as it conveys that families have 'given up' or abandoned their children. It is the experience of CYDA that relinquishment is an absolute last resort by families who are at breaking point due to the lack of support they receive to care for their children.

It is CYDA's experience that the decision to relinquish is rarely sudden, but builds up over time after all alternative options have been exhausted. While there is no typical family that relinquishes care, a common feature is extended and sustained failures to receive services for children with high support needs. Within the present disability services system, it can be a constant struggle with state and territory departments to secure funding for more than short periods, creating additional uncertainty and stress. It is therefore important to consider the effects of the inadequacies of the disability service system on children with disability as a reason for utilising permanent OOHC options. This can include statutory OOHC services, such as residential care.[34]

The National Disability Insurance Scheme (NDIS) was introduced due to a national recognition that the present disability service system is highly inadequate. CYDA frequently hears of the exasperation that children with disability and their families experience due to the constant and often insurmountable barriers within the disability service system to receiving adequate services and supports. Often children do not receive adequate early intervention supports, which progressively compounds disadvantage as children grow, placing a significant burden on children with disability and families.

The NDIS involves a completely new system of funding disability support, focused on the needs and choices of people with disability. Existing services and supports will need to adjust to ensure they fit with the aims and functions of the new Scheme and as a result, some services will cease. Presently many disability services and supports are in transition with a consequence being that access to services for children with disability is disjointed. The NDIS is being progressively established and will be fully implemented by 2019. Many children with disability are therefore yet to access the Scheme and some will not be eligible for funded services and support through the NDIS in the future. It should not be assumed at this time that the NDIS is greatly alleviating the immense difficulties children with disability face in accessing services and supports.

Under the section 'children with disability,' the consultation paper includes discussion of relinquishment. It states that the reasons that some children with disability are in OOHC is not due to abuse and neglect but because "parents were no longer able to cope" or "family resources had been exhausted or overwhelmed."[35] However, this does not accurately reflect the fundamental role played by the inadequate disability service and support system.

It has been reported to CYDA that for children with disability in OOHC, remaining connected to their family of origin can be challenging following relinquishment. Families have spoken of the requirement to relinquish through the child protection system. For example, a family reported that in order to relinquish, they had to inform child protection officials that they were at risk of harming their child if they could not get any support. This can lead to parents being treated like they have abused and neglected their children, causing further isolation and profound stress to children, young people and their families. It is critical to ensure that children's rights to continued and regular contact with their families are met.

[34] Royal Commission into Institutional Responses to Child Sexual Abuse 2016, *Consultation paper: Institutional responses to child sexual abuse in out of home care,* p. p. 18.
[35] Ibid, pp. 18-19.

It is important that the Royal Commission considers the specific needs of children utilising permanent OOHC options due to the inadequacies of the disability service system. As a group with typically high support needs,[36] this cohort experiences vulnerability to abuse. The 2012 report by the Victorian Equal Opportunity and Human Rights Commission entitled *Desperate measures: The relinquishment of children with disability into state care in Victoria* made a range of recommendations to prevent relinquishment, including the development of a state-based plan to prevent relinquishment.

Recommendation 22: State, territory and Commonwealth governments collaborate to collect national data about the reasons for placement of children in out of home care.

Recommendation 23: State, territory and Commonwealth governments develop a national action plan for preventing relinquishment that improves risk identification, early intervention, support for families, data collection and responses.

CONCLUSION

As acknowledged in the consultation paper, the OOHC system continues to be characterised by crisis and dysfunction. This places already vulnerable children at extremely high risk of a range of harms, including child sexual abuse. For children with disability, this vulnerability is heightened. It is hoped that the Royal Commission can stimulate the urgent reform required to implement safeguards for children in OOHC that includes consideration and a focus on the specific needs and circumstances of children with disability.

[36] Victorian Equal Opportunity and Human Rights Commission 2012, *Desperate measures: The relinquishment of children with disability into state care in Victoria,* p. 9.

SUMMARY OF RECOMMENDATIONS

Recommendation 1: States and territories collect data and commission research about child to child sexual abuse in out of home care that includes a specific focus on the experiences of children with disability.

Recommendation 2: All states and territories implement recommendation one of the 2015 *Inquiry into the adequacy of the provision of residential care services to Victorian children and young people who have been subject to sexual abuse or sexual exploitation whilst residing in residential care* by the Commission for Children and Young People in Victoria:

> *As a matter of priority, the Department [of Health and Human Services] must improve systems and processes for children entering residential care, changing placements and exiting residential care. This should be done by creating an expert panel, with some members independent of funder and provider, to assess all residential care placement decisions.*
>
> *The panel will assess placement decisions by considering:*
> - *compliance with the Aboriginal child placement principle for Aboriginal children*
> - *the impact on other children in the residential care unit*
> - *the suitability and safety of the placement*
> - *a demonstration that the placement will provide the best outcome for the child*
> - *the adequacy of stability planning and planning for when a child leaves care.*

Recommendation 3: All states and territories develop systems and processes to ensure placement decisions for children entering out of home care include consideration of the additional vulnerability to abuse experienced by children with disability and the specific needs and circumstances of each child with disability.

Recommendation 4: States and territories ensure that any research and program development and evaluation regarding sexually harmful behaviours treatment programs includes a focus on whether these programs incorporate the needs of children with disability.

Recommendation 5: States, territories and out of home care service providers ensure that best practice guidelines, policies and procedures for preventing and responding to child to child sexual abuse in out of home care acknowledge and reflect the overrepresentation of children with disability and their vulnerability to abuse.

Recommendation 6: State, territory and Commonwealth governments collaborate to collect national data on the number of children with disability in out of home care.

Recommendation 7: State, territory and Commonwealth governments and out of home care service providers collaborate to collect national data regarding allegations of sexual abuse in out of home care that includes demographic descriptors for the child and perpetrator, including disability status.

Recommendation 8: State, territory and Commonwealth governments and therapeutic treatment service providers collaborate to collect national data that identifies the number of children with disability in treatment programs sexually harmful behaviour.

Recommendation 9: State, territory and Commonwealth governments develop nationally consistent child safe standards and appropriate mechanisms for implementation and oversight.

Recommendation 10: Implementation of legally mandated child safe standards applicable to all out of home care service providers.

Recommendation 11: State and territory governments implement a regulatory framework, which includes clear accountability at the governance level of organisations, to ensure the safety of children accessing services, including sanctions for serious breaches in duty of care regarding abuse of children.

Recommendation 12: National child safe standards include requirements that organisations comply with minimum employment standards for staff supervision, professional development and working conditions that are known to be important safeguards in preventing child sexual abuse.

Recommendation 13: National child safe standards include requirements that organisations must comply with minimum pre-employment screening processes for people working with all children, including children in out of home care.

Recommendation 14: Inclusion in national child safe standards regarding 'education and training' of a focus on disability so staff are educated about the heightened vulnerability to abuse experienced by children with disability and the barriers to recognising abuse.

Recommendation 15: State and territory governments and out of home care service providers develop systems and processes to ensure consideration is given to strengthening protective behaviours for each child in out of home care, including access to sex education and sexual abuse prevention programs where necessary.

Recommendation 16: State and territory governments and out of home care service providers develop mechanisms to ensure sex education and sexual abuse prevention programs can be tailored to the individual needs and circumstances of each child.

Recommendation 17: Implementation of recommendation two of the final report of the Senate Community Affairs References Committee Inquiry into *Violence, abuse and neglect against people with disability in institutional and residential settings:*

> *The committee recommends the Australian Government consider the establishment of a national system for reporting and investigating and eliminating violence, abuse and neglect of people with a disability, which should, at a minimum:*
>
> - *be required to work in collaboration with existing state and territory oversight mechanisms; cover all disability workers, organisations and people with disability, without being restricted to NDIS participants;*
> - *include a mandatory incident reporting scheme; and*
> - *include a national worker registration scheme with pre-employment screening and an excluded worker register.*
> - *These elements are best implemented through the establishment of a national, independent, statutory protection watchdog that has broad functions and powers to protect, investigate and enforce findings related to situations of violence, abuse and neglect of people with disability.*

Recommendation 18: Implementation of recommendation three of the final report of the Senate Community Affairs References Committee Inquiry into *Violence, abuse and neglect against people with disability in institutional and residential settings:*

The committee recommends the Australian Government establish a scheme to ensure national consistency in disability worker training, to include the elements of:

- *mandatory rights based training to develop core competency skills in recognising and reporting violence, abuse and neglect of people with disability;*
- *review of current training and qualification levels to be conducted in collaboration with people with disability and the disability sector, with a view to increasing requirements;*
- *increased levels of training requirements to work with people with disability who have greater needs or vulnerabilities; and*
- *consideration of the need for an independent training program accreditation agency or body to oversee the scheme.*

Recommendation 19: Implementation of recommendation four of the final report of the Senate Community Affairs References Committee Inquiry into *Violence, abuse and neglect against people with disability in institutional and residential settings:*

The committee recommends the Australian Government consider establishing a disability worker registration scheme, to include the elements of:

- *nationally consistent pre-employment screening;*
- *an excluded worker registration scheme, tied to a mandatory incident reporting scheme;*
- *yearly worker registration scheme, with requirements for national criminal checks every five years;*
- *requirements for ongoing professional development; and*
- *a step-up system of registration, which requires increased training and skills to work with people with disability who have increased needs or vulnerabilities.*

The registration worker scheme will be best overseen by the national disability watchdog.

Recommendation 20: Implementation of recommendation five of the final report of the Senate Community Affairs References Committee Inquiry into *Violence, abuse and neglect against people with disability in institutional and residential settings:*

The committee recommends the Australian Government consider establishing a national approach to modify state and territory and Commonwealth service delivery accreditation programs, to:

- *ensure national consistency in service delivery accreditation programs;*
- *impose stronger requirements for facility and client specific induction training for carers;*
- *impose a mandatory incident reporting requirement tied to ongoing accreditation; and*
- *consider a scheme to impose service delivery standard requirements on management and boards, similar to occupational health and safety schemes.*

The changes to accreditation schemes will be best overseen by the national disability watchdog.

Recommendation 21: Implementation of recommendation nine of the final report of the Senate Community Affairs References Committee Inquiry into *Violence, abuse and neglect against people with disability in institutional and residential settings:*

The committee recommends the Australian Government work with state and territory governments on a nationally consistent approach to existing state and territory disability oversight mechanisms, to include;

- *a clear distinction between dispute resolution and complaints investigation processes;*
- *a requirement that service delivery organisations should not report to funding agencies due to the conflict of interest;*
- *the principle that immediate action be taken on allegations of abuse to ensure the individual's safety;*
- *increased funding for community visitor schemes, with consideration these schemes be professionalised in all jurisdictions and with a mandatory reporting requirement for suspected violence, abuse or neglect; and*
- *greater crossover in oversight and complaints mechanisms between aged care and disability and recognising that over 7000 young people with disability live in aged care facilities, ensure that disability service standards are applicable.*

A nationally consistent approach to disability oversight mechanisms is best overseen by the national disability watchdog.

Recommendation 22: State, territory and Commonwealth governments collaborate to collect national data about the reasons for placement of children in out of home care.

Recommendation 23: State, territory and Commonwealth governments develop a national action plan for preventing relinquishment that improves risk identification, early intervention, support for families, data collection and responses.

CONTACT

Stephanie Gotlib, Chief Executive Officer
20 Derby Street, Collingwood VIC 3066
Phone 03 9417 1025
stephanieg@cda.org.au
www.cda.org.au